

## **7 FAM 400 APPENDIX A REQUESTS FOR CLEMENCY, PARDON, AND RELEASE OF PRISONERS ON HUMANITARIAN GROUNDS OR OTHER REASONS**

*(CT:CON-407; 06-29-2012)  
(Office of Origin: CA/OCS/L)*

### **7 FAM 410 APPENDIX A SUMMARY**

*(CT:CON-407; 06-29-2012)*

- a. Post recommendations regarding requests for clemency, pardon, amnesty, or release of a prisoner on humanitarian grounds or for other reasons believed to be compelling are essential. The Department recognizes that policy guidance on this subject in the Foreign Affairs Manual cannot cover all new situations with which posts are confronted. The discussion in this appendix is not intended to be all-inclusive. We must be flexible and find creative approaches to sensitive and often fast-moving circumstances.
- b. Prior approval by the Department is required, except in emergency situations where post must act immediately to safeguard our citizens, before a post makes any request for clemency, pardon, amnesty, or release of a prisoner on humanitarian grounds or other reasons believed to be compelling. Department consideration and coordination is critical to ensure that any interventions by the United States are fully warranted, are being pursued in limited and comparable circumstances, are likely to have a productive impact, and would not, if pursued by a foreign government against the United States in a comparable situation, be seen as unwarranted political interference in a legitimate judicial process.
- c. In a critical emergency, the CA/OCS Duty Officer is available 24/7, and can arrange a conference call with post, senior Consular Affairs officials, the regional bureau, the L Duty Officer, the *CA/OCS/L* Duty Attorney, and other appropriate bureaus.
- d. For cases that do not require after-hours action, after receipt of post's cable setting forth post observations and conclusions, CA/OCS/ACS will coordinate with the regional bureau and other appropriate functional bureaus a fact-based review, considering the totality of circumstances and the potential for the accused to receive a fair judicial review, taking our lead from post recommendations. *CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov)* will coordinate law and policy clearances with the Office of the Legal Adviser for Consular

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Affairs (L/CA), the Office of the Legal Adviser for Law Enforcement and Intelligence (L/LEI), and other senior policy makers.

- e. Post leadership should feel free to contact principals in CA/OCS, including but not limited to the Directors of CA/OCS/ACS, *CA/OCS/L*, the CA/OCS Managing Director, and Deputy Assistant Secretary for Overseas Citizens Services, for support as we seek Department approval for post's proposed course of action.

## **7 FAM 420 APPENDIX A HUMANITARIAN GROUNDS**

*(CT:CON-406; 05-23-2012)*

- a. The following are examples, and only examples, of considerations the Department takes into account regarding U.S. Government requests for clemency, amnesty, pardon, or release, on humanitarian grounds on behalf of U.S. citizens incarcerated abroad. This is not all-inclusive and should not be regarded as a checklist.
- Health of the prisoner (**not** guilt or innocence)
  - Lack of fundamental due process under local law or international standards, including compelling evidence of a politically motivated, biased, or corrupted process
  - Compelling circumstances relating to the prisoner's family (e.g., imminent death of member of immediate family, sole support, etc.)
  - Significant risk to the physical safety of the individual while incarcerated due to the inability or unwillingness of the local or central government to safeguard the individual while in custody
  - Compelling evidence of factual innocence where the judicial system does not provide adequate due process safeguards to ensure a fair proceeding
- b. Under **no** circumstances may the U.S. Department of State or a post abroad suggest that any amnesty, pardon, clemency, release on humanitarian grounds, or humanitarian parole provided by foreign authorities be on a reciprocal basis. In the United States, pardons are granted only in the rarest of circumstances by the highest-level officials at the State or Federal level.
- c. Prisoners and their families, attorneys, or Congressional representatives may, of course, initiate their own requests to the host country for clemency or pardons, etc.
- d. Consular officers may provide prisoners with information available from the host government about pardon procedures.

## **7 FAM 430 APPENDIX A HUMAN RIGHTS GROUNDS**

*(CT:CON-407; 06-29-2012)*

- a. If the legal and human rights of U.S. citizens and nationals arrested abroad are to be adequately protected, we must be prepared to protest substantiated violations and abuses of those rights. Such rights are prescribed, among other instruments, in the Universal Declaration of Human Rights (1948) and for States Parties the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) as well as regional human rights treaties. Violations and abuses may include torture and other cruel, inhuman, or degrading treatment and discrimination based on race, religion, gender, national origin, or other protected ground (see additional information below).
- b. Department approval is generally required before a post asserts to a foreign government that it is in violation of its human rights obligations with regard to a prisoner. An alternative approach can be to raise a substantiated "abuse" rather than a "violation" -- as abuse is not a legal term -- or to remind the foreign government that the United States expects it to uphold its human rights obligations pertaining to the treatment of a prisoner(s).
- c. The purposes of protests include:
  - (1) Protecting U.S. citizen prisoners against further abuse or violation of their rights;
  - (2) Impressing on the host government that the U.S. Government is seriously concerned about the welfare of its citizens and nationals and will not condone or tolerate violation of their rights;
  - (3) Protecting future U.S. citizen detainees against similar maltreatment;
  - (4) Improving the general level of treatment of U.S. citizens and nationals arrested and detained in foreign countries and
  - (5) Requesting release of U.S. citizen prisoners whose human rights have been abused.
- d. Political Prisoners:
  - (1) The Department recognizes that when a U.S. citizen is arrested for political grounds, the safety of the U.S. citizen political prisoner is at high risk solely by the fact of his/her detention/imprisonment. In many of these cases, the prisoners are summarily arrested and not informed of or charged with any specific criminal actions or held without charges. Often, they are immediately placed in solitary confinement without benefit of any legal due process. This situation alone causes significant stress on the prisoner, thus beginning the cycle of repression and debasement. For this reason, political prisoners should never be considered on a par with U.S. citizens who have been imprisoned on criminal charges pursuant to due process of

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law. Political prisoner cases vary widely depending on the country involved and the political message that country wishes to convey to the United States through the imprisonment of the person.

- (2) Because of these diverse factors, CA/OCS/ACS and posts must confer closely and often on such cases. Due to the multi-faceted nature of these cases and the variety of valid, overlapping interests evident in these cases, posts and ACS should endeavor to bring other offices and bureaus of the Department that have interests from the human rights, legal, and political standpoints into the conversation at the earliest opportunity. Often, these other Department organizations have at their disposal other options to advocate for the proper treatment and eventual release of the prisoner. A coordinated, unified approach rather than singlehanded actions work more to the advantage of the prisoner.
  - (3) Mistreatment of such prisoners is often subtle, and difficult to document. Such prisoners are closely watched by host country officials and will not be free to complain of mistreatment. Even mild references to conditions may result in serious repercussions. Psychological and physical abuse may not be immediately evident to the untrained eye. It is therefore, incumbent on the Department to listen closely to post observations based on repeated visits to such prisoners by consular officers and high-level embassy/consulate officials. These observations and advice should be examined carefully and taken into serious account when making decisions about future Department actions as we craft a request to either protest or request release of the prisoner on human rights grounds or any other grounds. [CA/OCS/L \(Ask-OCS-L-Dom-Post@state.gov\)](mailto:Ask-OCS-L-Dom-Post@state.gov) senior policy analysts have experience in formulating such requests and in working with the Office of the Legal Adviser for Human Rights and Refugees (L/HRR), Democracy, Human Rights and Labor (DRL), and international organizations on these issues and are available to assist posts in this regard.
- e. The following non-binding consensus U.N. instruments on treatment of prisoners can be helpful in informing discussions about this subject:
- (1) U.N. Standard Minimum Rules for Treatment of Prisoners (1977)
  - (2) U.N. Basic Principles for Treatment of Prisoners (1990)
- f. See also the 1948 Universal Declaration on Human Rights, the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) to which the United States is a party, and the International Covenant on Civil and Political Rights (ICCPR) (1966) to which the United States is a party, and in particular ICCPR:
- Article 6 on Right to Life
  - Article 7 prohibiting Torture and Cruel, Inhuman and Degrading Treatment or Punishment

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- Article 8 prohibiting Slavery and Servitude
- Article 9 on the Right to Liberty and Security of the Person and prohibiting arbitrary arrest or detention
- Article 10 on Humane Treatment of Persons in Detention
- Article 14 on Equality before the Courts and Due Process of Law
- Article 15 prohibiting Ex Post Facto Criminal Offenses
- Article 16 on the Right to Recognition as a Person Before the Law
- Article 26 on Equality Before the Law and prohibiting discrimination on the basis of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

## **7 FAM 440 APPENDIX A OTHER GROUNDS**

*(CT:CON-407; 06-29-2012)*

- a. Humanitarian and human rights are not the only grounds that may warrant requests for clemency, pardon, amnesty, or release of a prisoner. There is no litmus test or check list of criteria that a post must apply for such a request to be considered. The Department relies on post's expertise and hands-on knowledge of the situation to inform policy decisions in these matters. Do not hesitate to bring cases to the Department's attention for serious consideration. We appreciate posts' diligence and foresight in ensuring the protection of U.S. citizens in these difficult circumstances.
- b. Posts are also advised to consider any prisoner transfer treaties to which both the United States and the host government are parties. See 7 FAM 480. Questions about prisoner transfer should be directed to [CA/OCS/L](mailto:CA/OCS/L) ([Ask-OCS-L-Dom-Post@state.gov](mailto:Ask-OCS-L-Dom-Post@state.gov)).

## **7 FAM 450 APPENDIX A – 7 FAM 490 APPENDIX A UNASSIGNED**